IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2754 of 2007

SHEO PRAKASH & ANR.
V/S
VISHNU & ORS.

Mr. DD CHITLANGI, for the appellant / petitioner

Date of Order : 30.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

The learned trial Court vide order dated 25.11.2006 had dismissed the objection petition as having abated. That order had not been challenged by the petitioner, and on the other hand, application had been filed under Section 151 and Order 1 Rule 10 CPC contending that the order passed on 25.11.2006 is contrary to law and material on record and is liable to be set aside, and that the legal representatives of the deceased-decree-holder be substituted. This application was filed on 23.4.2007, that has been dismissed by the impugned order. In my view, the learned trial Court was not at all in error in dismissing the application filed on 23.4.2007. In the garb of titling the application under Section 151 CPC and Order 1 Rule 10, the petitioner could not claim setting aside of the order dated 25.11.2006. At best he could file a review petition against that order for which also time had already expired.

In that view of the matter, the order Annex.9 does not require any interference.

In this writ petition, the petitioner has additionally sought to now challenge the order dated 25.11.2006 by simply contending that the order has been obtained by misrepresentation of facts in the application Annex.6.

Having perused the application Annex.6, I do not find any misrepresentation therein, inasmuch as all that has been pleaded is that Ramdas has expired on 21.2.2002, and legal representatives have not been brought on record, and the proceedings under Order 21 Rule 97 are governed by the provisions applicable to suit, therefore, it abates. In the order dated 25.11.2006 reliance has been placed by the learned trial Court on the judgment in Arif Abdul Gani Vs. Saikandra reported in 1999 AIHC 831. A look at that judgment shows that it does consider provisions of Order 22 Rule 12 as well, and takes a view that Order 22 Rule 3 applies with provisions of Order 21 Rule 97. In that view of the matter, I do not find any error in the impugned order dated 25.11.2006 either.

The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

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